

Janis Puracal

From: Janis Puracal
Sent: Friday, August 05, 2016 5:04 PM
To: 'David West'
Cc: Victoria Slade; Don Scaramastra; Andrew Lauersdorf; Katie Welsh
Subject: RE: de Jaray v. Attorney General of Canada: FRCP 26(f) Conferral Dates

David:

The scope of discovery will depend on the bases for your motions. Because you are unwilling to tell us the bases for your motions, we are prepared to move the court for a Rule 16 scheduling conference and order.

By way of explanation, we are trying to save the court and the parties some time. Ultimately, you will file your motions on September 29, and Plaintiff will have limited time under the rules to respond. Rather than waiting for the motions and requesting leave for discovery and multiple extensions to respond while we wait for discovery responses, we prefer to begin that process of discovery now.

Janis



MALONEY | LAUERSDORF | REINER PC
ATTORNEYS AT LAW

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****Note that my email address has changed to jcp@mlrlegalteam.com. Visit our website at www.mlrlegalteam.com**

From: David West [mailto:DrWest@gsblaw.com]
Sent: Friday, August 05, 2016 4:38 PM
To: Janis Puracal <jcp@mlrlegalteam.com>
Cc: Victoria Slade <VSlade@gsblaw.com>; Don Scaramastra <DScaramastra@gsblaw.com>; Andrew Lauersdorf <acl@mlrlegalteam.com>; Katie Welsh <kmw@mlrlegalteam.com>
Subject: RE: de Jaray v. Attorney General of Canada: FRCP 26(f) Conferral Dates

I am available the morning of the 15th. In the meantime, since you assert you have a sufficient basis to ask the Court to allow discovery without further discussion, you presumably can tell me on what issues, what type of discovery, why such discovery is necessary and appropriate, and how discovery meets the standards described below. I would expect these issues to be part of any motion, so I think that you should be able to let me know now. Please tell me what those are, in advance of our discussion on the 15th. Some draft discovery requests would probably be helpful in framing the issues and explaining to my client what you want (and evaluating the burden of responding). If you can't (or won't) provide these answers, then I am not sure how we will effectively confer on these issues.

From: Janis Puracal [mailto:jcp@mlrlegalteam.com]
Sent: Friday, August 5, 2016 9:26 AM

To: David West <DrWest@gsblaw.com>

Cc: Victoria Slade <VSlade@gsblaw.com>; Don Scaramastra <DScaramastra@gsblaw.com>; Andrew Lauersdorf <acl@mlrlegalteam.com>; Katie Welsh <kmw@mlrlegalteam.com>

Subject: RE: de Jaray v. Attorney General of Canada: FRCP 26(f) Conferral Dates

David,

Again, it would be helpful to understand the bases for your motions. That would allow us to articulate the scope of discovery necessary to respond. If you are available to confer on Monday, August 15 after your vacation, we will hold off on our motion. If, however, you are unwilling to articulate the bases for your motions, we will seek leave from the court.

Janis



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From: David West [<mailto:DrWest@gsblaw.com>]

Sent: Friday, August 05, 2016 8:57 AM

To: Janis Puracal <jcp@mlrlegalteam.com>

Cc: Victoria Slade <VSlade@gsblaw.com>; Don Scaramastra <DScaramastra@gsblaw.com>; Andrew Lauersdorf <acl@mlrlegalteam.com>; Katie Welsh <kmw@mlrlegalteam.com>

Subject: RE: de Jaray v. Attorney General of Canada: FRCP 26(f) Conferral Dates

Before you do that, I do think we need to confer further. You have not identified what type of discovery you believe is appropriate, what discovery you want to take, what issues you believe require discovery, and why the discovery you propose falls within the standards of the cases mentioned below. All of those topics must be covered by a meet and confer, which is why I suggested we discuss these matters after the Court issues its scheduling order. Further, it is highly inappropriate to conduct discovery prior to FRCP 12(b)(6), which is one of the motions we will be filing.

From: Janis Puracal [<mailto:jcp@mlrlegalteam.com>]

Sent: Friday, August 5, 2016 8:09 AM

To: David West <DrWest@gsblaw.com>

Cc: Victoria Slade <VSlade@gsblaw.com>; Don Scaramastra <DScaramastra@gsblaw.com>; Andrew Lauersdorf <acl@mlrlegalteam.com>; Katie Welsh <kmw@mlrlegalteam.com>

Subject: RE: de Jaray v. Attorney General of Canada: FRCP 26(f) Conferral Dates

David,

I understand your position. We need to move forward on our end given that time is limited. Since your clients do not believe discovery is appropriate or necessary, we will move the court for leave to take discovery. If you think that further conferral would be productive, please let me know right away.

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From: David West [<mailto:DrWest@gsblaw.com>]

Sent: Thursday, August 04, 2016 5:16 PM

To: Janis Puracal <jcp@mlrlegalteam.com>

Cc: Victoria Slade <VSlade@gsblaw.com>; Don Scaramastra <DScaramastra@gsblaw.com>; Andrew Lauersdorf <acl@mlrlegalteam.com>; Katie Welsh <kmw@mlrlegalteam.com>

Subject: RE: de Jaray v. Attorney General of Canada: FRCP 26(f) Conferral Dates

I will confer with my clients, but I am on vacation next week and not available to talk. I will get back to you on my return, but as I noted before, discovery is very narrowly circumscribed even where it is available in connection with motions to dismiss, and we do not believe any discovery is appropriate or necessary here.

From: Janis Puracal [<mailto:jcp@mlrlegalteam.com>]

Sent: Thursday, August 4, 2016 1:43 PM

To: David West <DrWest@gsblaw.com>

Cc: Victoria Slade <VSlade@gsblaw.com>; Don Scaramastra <DScaramastra@gsblaw.com>; Andrew Lauersdorf <acl@mlrlegalteam.com>; Katie Welsh <kmw@mlrlegalteam.com>

Subject: RE: de Jaray v. Attorney General of Canada: FRCP 26(f) Conferral Dates

David,

We will follow the JA's email on the submission of a joint status report. We would, however, appreciate the opportunity to take discovery in advance of motions to dismiss so that we are prepared to respond. We propose to confer on the motions to dismiss and reasonable limits on pre-motions discovery next week. Please let me know whether your clients will agree.

Janis



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From: David West [<mailto:DrWest@gsblaw.com>]

Sent: Tuesday, August 02, 2016 4:17 PM

To: Janis Puracal <jcp@mlrlegalteam.com>

Cc: Victoria Slade <VSlade@gsblaw.com>; Don Scaramastra <DScaramastra@gsblaw.com>; Andrew Lauersdorf <acl@mlrlegalteam.com>; Katie Welsh <kmw@mlrlegalteam.com>

Subject: RE: de Jaray v. Attorney General of Canada: FRCP 26(f) Conferral Dates

Janis –

In our experience, and under our local rules, the timing of and the subjects to be discussed at the Rule 16 and 26 conferences are established by order of the Court. That is Judge Martinez's standard practice – he issues an order outlining the deadlines and the topics pursuant to the local rules. Thus, we do not believe there is any deadline currently at hand. I have never had anyone claim before that the Federal Rules establish such a deadline.

When we do have an order from the Court, we will need to discuss the limitations on any discovery we believe can take place during the jurisdictional stage of this action. Discovery is narrowly limited and only allowed to verify allegations of specific facts, if any, necessary to determine the preliminary issues of the Court's subject matter jurisdiction. We do not believe the Court has subject matter jurisdiction, that it should exercise jurisdiction over this matter, or that any discovery is necessary for the Court to so rule. Further, discovery into the merits is not appropriate until and unless the Court determines that it does have jurisdiction. Finally, to the extent you contend discovery is needed for the Court to rule on the jurisdictional issues, the Court will need to carefully evaluate any requested discovery in light of the factors identified in cases such as *Societe National Industrielle Aerospatiale v. U.S. District Court*, 482 U.S. 522 (1987), *Arriba Ltd. V. Petroleos Mexicanos*, 962 F.2d 528 (5th Cir. 1992), and *First City, Texas-Houston, N.A. v. Rafadain Bank*, 150 F.3d 172 (2nd Cir. 1998).

Once we do have an order from Judge Martinez (which I expect he will issue shortly after ruling on our stipulation), we should meet and confer on whether you believe any discovery is needed at this stage, and if so, to what extent. While I do not have instructions from my clients yet, it is possible we may bring a motion to stay or limit discovery after we have conferred with you.

David

From: Janis Puracal [<mailto:jcp@mlrlegalteam.com>]

Sent: Tuesday, August 2, 2016 3:26 PM

To: David West <DrWest@gsblaw.com>

Cc: Victoria Slade <VSlade@gsblaw.com>; Don Scaramastra <DScaramastra@gsblaw.com>; Andrew Lauersdorf <acl@mlrlegalteam.com>; Katie Welsh <kmw@mlrlegalteam.com>

Subject: RE: de Jaray v. Attorney General of Canada: FRCP 26(f) Conferral Dates

David,

I am checking in on my email below. Do you have time to confer today or tomorrow?

Janis



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From: Janis Puracal

Sent: Monday, August 01, 2016 7:59 AM

To: 'David West' <DrWest@gsblaw.com>

Cc: Victoria Slade <VSlade@gsblaw.com>; Don Scaramastra <DScaramastra@gsblaw.com>; Andrew Lauersdorf <acl@mlrlegalteam.com>; Katie Welsh <kmw@mlrlegalteam.com>

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David,

We are calculating the dates under FRCP 16(b)(2) and FRCP 26(f)(1) and (2).

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From: David West [<mailto:DrWest@gsblaw.com>]

Sent: Friday, July 29, 2016 9:25 PM

To: Janis Puracal <jcp@mlrlegalteam.com>

Cc: Victoria Slade <VSlade@gsblaw.com>; Don Scaramastra <DScaramastra@gsblaw.com>; Andrew Lauersdorf <acl@mlrlegalteam.com>; Katie Welsh <kmw@mlrlegalteam.com>

Subject: Re: de Jaray v. Attorney General of Canada: FRCP 26(f) Conferral Dates

I am unaware of any order issued by the court. Has one been issued?

David R. West
(206) 947-7987 cell

On Jul 29, 2016, at 5:17 PM, Janis Puracal <jcp@mlrlegalteam.com> wrote:

David,

Our deadline to confer under FRCP 26(f) is coming up on August 2, with our deadline for the joint report on August 16. Are you available to talk on Monday (August 1) after 3:30 p.m. or Tuesday (August 2) after 1:30 p.m.?

Janis

<image001.gif>

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